# CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	✓ Force	☐ Discourt.	☐ U.S.
Alfredo Gonzalez		Squad #7	201505686	☐ Abuse	O.L.	✓ Injury
Incident Date(s)		Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Saturday, 06/27/2015 9:35 PM		§ 87(2)(b)	87(2)(b)	47	12/27/2016	12/27/2016
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/Time	Received at CCI	RB
Fri, 07/10/2015 4:46 PM		CCRB	On-line website	Fri, 07/10/	2015 4:46 PM	
Complainant/Victim	Type	Home Addre	ess			
Witness(es)		Home Addre	ess			
Subject Officer(s)	Shield	TaxID	Command			
1. POM Mark Fleming	24493	941763	047 PCT			
Witness Officer(s)	Shield N	o Tax No	Cmd Name			
1. POF Eleanor Walsh	24470	946384	047 PCT			
Officer(s)	Allegation	on		Inve	estigator Recon	nmendation
A.POM Mark Fleming	Force: Possible 87(2)(b)	O Mark Fleming used ph	nysical force against			

# **Case Summary**

On June 27, 2015, at approximately 9:35 p.m., \$87(2)(b) exited her friend's vehicle
after an argument. She exited in a residential area of the Bronx with which she was unfamiliar
(which was later revealed to be \$87(2)(b) in the Bronx). \$87(2)(b) stated that she
was smoking a cigarette on someone's property, which prompted the property owners to call 911
PO Mark Fleming and PO Eleanor Walsh responded and, for reasons unknown to \$87(2)(6)
she was placed in handcuffs, put into an ambulance, and transported to \$87(2)(b)
While waiting at the hospital, \$87(2)(b) stood up to see PO Fleming's nametag. Immediately
after, PO Fleming allegedly grabbed \$87(2)(b) s shoulders and pushed her down onto the chair
thereby causing her left elbow to make contact with the chair (Allegation A). § 87(2)(6)
sustained a laceration on her left elbow, allegedly due to PO Fleming's action \$87(2)(b)
medical records indicated that she had a laceration on her left elbow while at the hospital. There
was no summons issued or arrest made as a result of this incident.

### Mediation, Civil, and Criminal Histories

This case was unsuitable for mediation because \$87(2)(b) stated she planned on filing a lawsuit. A notice of claim inquiry was submitted on August 25, 2015, and will be added to the case file upon its receipt. \$87(2)(b) s criminal history could not be verified because her NYSID could not be recovered from the NYPD's Booking and Arraignment Disposition System database.

### **Civilian and Officer CCRB History**

- § 87(2)(b)
- PO Fleming has been a member of the NYPD for nine years. PO Fleming has been the subject of five allegations stemming from two cases. None of the allegations were substantiated.
- § 87(2)(g)

# **Potential Issues**

• An Aided Report was not created for this incident, despite PO Fleming and PO Walsh removing \$87(2)(6) to the hospital.

# **Findings and Recommendations**

# Allegation A – Force: PO Mark Fleming used physical force against It is undisputed that PO Fleming used physical force against \$87(2)(b) when placing her on the chair; \$87(2)(b) \$87(2)(c) \$87(2)(

CCRB Case # 201505686

stated that she did not receive any treatment while at the hospital, nor was she seen by a
doctor (Board Review 02-05).
PO Fleming stated that \$87(2)(b) appeared intoxicated and did not know where she was.
Additionally, there was an empty bottle of Hennessy in her vicinity, she appeared disheveled, and
she had slurred speech. According to PO Fleming, \$87(2)(b) was combative and belligerent
towards him and PO Walsh. \$87(2)(b) was transported to \$87(2)(b) via
ambulance, accompanied by PO Walsh. Upon arrival, PO Fleming observed that \$87(2)(b) was
in handcuffs, which PO Walsh stated was necessary given that she had lunged at her and at the
EMT's during the journey to the hospital. PO Fleming stated that \$87(2)(b) continued to
behave combatively, yelled obscenities, and got up from her seat numerous times in the triage
area. PO Fleming acknowledged that he and PO Walsh had to force \$87(2)(b) to sit down
several times, but he did not recall her elbow ever making contact with the chair in a manner that
would have caused a laceration. PO Fleming did not observe any injuries on \$87(2)(b) at the
hospital, nor did she complain of any. PO Walsh's testimony was highly consistent with PO
Fleming's and did not differ in any significant way. She also acknowledged forcing \$87(2)(b)
onto a chair several times after she got up. PO Walsh did not observe any injuries on \$87(2)(b)
nor did she observe \$87(2)(b) complain of any (Board Review 06-07).
the individual that called 911 to report \$87(2)(6) corroborated the fact
that she was highly intoxicated and belligerent while at \$87(2)(b) in the Bronx. He did
not observe any injuries on \$87(2)(6) nor did she complain of any while in his presence (Board
Review 08). The Prehospital Care Report indicated that \$87(2)(6) acknowledged that she had
been drinking and that she denied having any recent injury or trauma, of which there were no
visible signs. It also stated that \$87(2)(6) became verbally abusive with an officer and
threatened to cause harm, for which she was placed in handcuffs. The medical records indicated
that \$87(2)(b) had a three-inch laceration to her left elbow, but she "eloped" before being seen
by a doctor (Board Review: Privileged Documents).
Officers may use the minimum amount of force necessary to take into custody a violent or
resisting individual. NYPD Patrol Guide, Section 203-11 (Board Review 09).
§ 87(2)(b), § 87(2)(g)

Page 3

CCRB Case # 201505686

Squad:			
Investigate	or: Signature	Print	Date
Squad Lea	der: Title/Signature	Print	 Date
Attorney:	Title/Signature	— Print	